



ANNOUNCEMENT

from the Copyright Office, Library of Congress, Washington, D.C. 20559

NOTICE OF PUBLIC HEARING AND NOTICE OF INQUIRY

DURATION OF COPYRIGHT TERM OF PROTECTION

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LIBRARY OF CONGRESS

Copyright Office

[Docket No. RM 93-8]

Duration of Copyright Term of Protection

AGENCY: Copyright Office; Library of Congress.

ACTION: Notice of Public Hearing and Notice of Inquiry

SUMMARY: The Copyright Office publishes this Notice to inform the public that it is preparing a report on the arguments for and against possible amendment of the copyright law to extend the duration of copyright protection under U.S. copyright law. In order to assist in the preparation of this report, the Copyright Office is scheduling an open public hearing in order to gather input, as well as requesting the submission of written comments. **DATES:** The public hearing will be held in Room 407, James Madison Memorial Building, 101 Independence Avenue, S.E., Washington, D.C. on September 29, 1993 beginning at 10 a.m. Those persons who wish to make oral presentations should contact Dorothy Schrader, Copyright General Counsel by telephone at (202) 707-8380 or fax (202) 707-8366 one week before the date of the hearing. Written comments by those persons who are making oral presentations at the hearing are due one week prior to the date of the hearing; other comments including reply comments are due 30 days after the date of the hearing.

ADDRESSES: Ten copies of written comments should be addressed, if sent by mail to: Library of Congress, Department 100, Washington, D.C. 20540. If delivered by hand, copies should be brought to: Office of the General Counsel, Copyright Office, Room 407, James Madison Memorial Building, First and Independence Avenue, S.E., Washington, D.C. 20559.

FOR FURTHER INFORMATION CONTACT: Dorothy Schrader, General Counsel, Copyright Office, Library of Congress, Washington, D.C. 20540. Telephone (202) 707-8380.

SUPPLEMENTARY INFORMATION:

1. Background

The Copyright Office is conducting a study examining the term of protection for copyrighted works under U.S. law, 17 U.S.C. §300 *et. seq.* This study is conducted in light of the recent developments in Europe favoring harmonization of the terms of protection.

Section 302 of the Copyright Act, 17 U.S.C., specifies the copyright term of protection for works created on or after January 1, 1978, the effective date of the Act. In the case of a work created by a natural author, the term of copyright begins "from its creation" and lasts for "the life of the author and fifty years after the author's death." 17 U.S.C. §302(a). In the case of works of joint authorship, protection continues for fifty years after the death of the last surviving author, §302(b), and for anonymous and pseudonymous works and works made for hire, the term is "seventy-five years from the year of its first publication, or a term of one hundred years from the year of its creation, whichever expires first." Section 302(c).

The term of life of the author plus fifty years embodied in the 1976 Copyright

Act marked a distinct break in tradition from the first copyright statute in 1790. Previous American copyright law had always established a specific period of protection (in the case of the 1909 Copyright Act, 28 years with a potential for a renewal period of an additional 28 years) which commenced from either publication or registration of the work. The current law, however, creates a generally broader and less specific period of protection by utilizing the date of the author's death, and commences the term of protection from the creation of the work, as opposed to its publication or registration.¹ The House Report to the 1976 Act described the reasons for the change:

1. The 56 year term of protection under the 1909 Act is not long enough "to insure an author and his dependents the fair economic benefits from his works" due to increases in normal life expectancy.

2. The growth in communications media substantially lengthened the commercial life of many works, particularly serious works whose value might not be recognized until after many years.

3. Too short a term harms the author without a corresponding benefit to the public, since "[t]he public frequently pays the same for works in the public domain as it does for copyrighted works, and the only result is a commercial windfall to users at the author's expense."

4. The death of the author is a more certain and discernible date than the publication of the work, and means that all of the author's works will go into the public domain at the same time, eliminating the need for keeping track of varied publishing dates.

¹ As noted above, publication still has significance for term of protection for anonymous and pseudonymous works and works made for hire.

5. The life-plus-50 system eliminates the need for copyright renewal.

6. The generous life-plus-50 term compensates authors for the loss of previously enjoyed common law protections, due to federal preemption of copyright.

7. The life-plus-50 term brings the U.S. in line with the term of protection granted in most foreign countries and opens the way for U.S. adherence to the Berne Convention.

H.R. Rep. No. 1476, 94th Cong., 2d Sess. 134-135 (1976).

The life-plus-50 term has served its purpose well and, indeed, was one of the key elements which aided in eventual U.S. adherence to the Berne Convention. However, several recent international developments have once again raised the issue of whether the duration of U.S. copyright protection is too limited.

2. European Community Draft Directive

One significant development affecting duration of protection in the international arena has been a proposal for a Council Directive published by the Commission of the European Communities in March, 1992. Concerned over the varying terms of protection in European countries and the barriers to trade and distortions of competition brought about by those differences, the Commission proposed a uniform standard. For natural authors, protection would last for the life of the author plus seventy years. As with current U.S. law, publication has no bearing on the term of protection for such works, since protection begins at the time of creation of the work. Joint works would likewise have the life-plus-70 term from the death of the last surviving author.

For anonymous, pseudonymous and collective works and works made for hire (described as "works considered under the legislation of a Member State to have been created by a legal person"), the Commission proposed a term of protection of seventy years from the time when "the work is lawfully made available to the public"—i.e. publication. Art. I, para. 3. Anonymous and pseudonymous works do not continue to receive protection if it is reasonable to presume that the author has been dead for seventy years. Art. I, para. 4. And for collective works which are works for hire, protection runs for seventy years from the date of its creation. Art. I, para. 6.

The Commission also proposed separate terms of protection for so-called "related rights,"² only some of

which are recognized under U.S. copyright law. Thus, for performers, the duration of protection is fifty years from the publication of the fixation of the performance or, if there has been no publication of the fixation, fifty years from the first dissemination of the performance. Likewise, the rights of producers of phonograms and producers of cinematographic works run for fifty years from first publication, or from the date of fixation if there has been no publication. And the rights of broadcasters run for fifty years from the first transmission of a broadcast.

Although the Commission's proposal is not without controversy, European Community member states agreed in Luxembourg in mid-June 1993 to adopt the life-plus-70 term by an 8 to 4 vote.

3. Berne Protocol

The other recent international development affecting copyright duration is the possible protocol to the Berne Convention. Article 7(1) of the Berne Convention establishes the general rule that "[t]he term of protection granted by this Convention shall be the life of the author and fifty years after his death." The life-plus-50 term of protection is a Convention *minima*—i.e. countries are free to accord greater protection than life-plus-50 if they so desire. Numerous Berne countries currently grant such greater protection (ex. Brazil and Spain for 60 years; Austria, Germany and France (musical works) for 70 years).

In a 1991 report of the First Session of the Committee of Experts on a Possible Protocol to the Berne Convention, the Committee stated that "it may be justified to consider the inclusion of a provision in the possible Protocol under which all references to the 50 years in the Berne Convention would be replaced by 70 years." Report at 30. A certain period of time, possibly 5 years, would be granted to member countries whose term of protection was shorter than life-plus-70 to enact legislation to raise their standards to the Convention minima. If this provision is included in a final protocol to which the United States should elect to adhere, the United States would be obligated to amend Chapter 3 of the Copyright Act to meet the life-plus-70 term. Although the Committee has not formerly adopted the position of life-plus-70³, there nonetheless remains the real possibility of it someday becoming the Berne Convention

standard especially in light of the recent decision by the European Community.

4. Copyright Office Study and Public Hearing

Because of changes in the international arena and the extensive circulation and use of U.S. copyrighted works in foreign markets, the Copyright Office is studying the arguments for and against an expanded term of protection in our copyright laws. In order to facilitate this endeavor, the Office announces an open public hearing to address the implications of an extension to the Copyright Act's duration of protection.

The Copyright Office also requests that interested parties submit formal written comments regarding extension of the duration of copyright. Such comments should address issues related to changes in foreign protection, such as the effect on marketplace competition and U.S. works in foreign markets, as well as issues related to domestic protection. In order to better facilitate discussion during the open hearing, comments from those who intend to make oral presentations at the hearing are due one week prior to the date of the hearing.

Dated: July 26, 1993.

Ralph Oman

Register of Copyrights

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² "Related rights" or "neighboring rights" constitute separate legal forms of protection for categories of persons who are not considered copyright authors in the traditional sense under the laws of many European countries. Examples are broadcasters, performers, and producers of phonorecords. U.S. law, which does not recognize neighboring rights, treats some of these categories as works of authorship, subject to copyright protection.

³ In its 1992 Report from the Second Session of the Committee of Experts on a Possible Protocol to the Berne Convention, the Committee noted that there was considerable discussion and disagreement over a life-plus-70 proposal. Absent general agreement, the proposal has been postponed to future meetings of the Committee.